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REPLY BRIEF

559 SW 2d 721

SUPREME COURT OF KENTUCKY

File No. 76-481

GERALDINE CALHOUN,

APPELLANT,

vs.

DARRELL CALHOUN,

APPELLEE.

APPEAL FROM FLOYD CIRCUIT COURT

REPLY BRIEF FOR APPELLANT

FILED

JUL 23 1976

Martha Lynn Collins
CLERK
Supreme Court of Kentucky

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The undersigned certifies that this brief was mailed to the Honorable Hollie Conley, Circuit Court Judge, Prestonsburg, Kentucky and to the Honorable Burnis Martin, Attorney for Appellee, Court Street, Prestonsburg, Kentucky 41653, this 22d day of July, 1976.


LARRY SWORD

SUPREME COURT OF KENTUCKY

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PURPOSE OF THE BRIEF

The purpose of this brief in reply to Appellee's brief is to clarify the issues involved in this case and the questions presented to this Court. Appellee's brief inaccurately restates both the issues and Appellants' legal argument

ARGUMENT

Appellee has submitted to this Court that the case at bar cannot be distinguished from the case of Crosier v. Hunt, Ky., 522 S.W.2d 453, in which this Court had refused to change a custodial arrangement

because it held that the trial court had "heard the testimony [and] witnessed the demeanor of the witnesses." As Appellant stated in her brief and as the trial court found in its Findings of Fact, this action was heard solely on the depositions of the parties and their witnesses and the testimony of the infant children. Record p. 256. No evidentiary hearing was held before the court and therefore the trial court did not witness the demeanor of the parties and their witnesses.

Furthermore, Appellee's brief evades the issues involved in this appeal by incorrectly restating Appellant's position. Contrary to Appellee's statement on page six of his brief, Appellant is not contending that the trial court committed reversible error by failing to make findings of fact. It is clear from the record that the trial court could not have found that the Appellant was an unfit mother, because there is no substantial evidence in the record to support such a finding. Appellant contends, firstly, that the trial court's failure to grant custody of the infant children to Appellant was clearly erroneous, and, secondly, that the trial court's grant of custody to the Appellee was clearly erroneous because it was in effect a grant of custody to the paternal grandparents and no adjudication had been made that the Appellant was unfit, or that the best interests of the children would thereby be served.

Respectfully submitted,



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